

Refocusing the United States’ Perspective of China and the South China Sea

GAARET MARINELLI*

TABLE OF CONTENTS

I.	INTRODUCTION	116
II.	LEGAL ANALYSIS & ISSUES	118
	A. <i>Introduction</i>	118
	B. <i>Recent Economic Events</i>	118
	1. <i>United States’ Withdrawal from the Trans-Pacific Partnership</i>	118
	2. <i>The United States & China Sign “Phase One” of the Trade Agreement</i>	119
	3. <i>The Economic Effect of the Coronavirus</i>	120
	C. <i>Recent Events Affecting U.S. Military and Strategic Relationships</i>	121
III.	HISTORICAL OVERVIEW OF U.S. INVOLVEMENT IN THE SOUTH CHINA SEA	122
IV.	HOW THE UNITED STATES BENEFITS FROM THE SOUTH CHINA SEA	125
	A. <i>Current Economic Value</i>	125
	B. <i>Strategic Value of the South China Sea</i>	128
V.	RECENT EVENTS IN THE SOUTH CHINA SEA.....	129
	A. <i>Applicable International Law</i>	129
	B. <i>Maritime Disputes in the South China Sea</i>	130
	C. <i>Disputes in the South China Sea Moving Forward</i>	132
VI.	COUNTRIES FACING PRESSURE BY CHINA.....	134
	A. <i>The Philippines</i>	135
	B. <i>Malaysia</i>	137
	C. <i>Japan</i>	137
	D. <i>Vietnam</i>	138

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VII.	APPLICABLE LAW	139
A.	Overview of ARIA	139
B.	Security Provisions	140
C.	Economic Provisions	142
VIII.	WHAT ARIA IS FAILING TO DO.....	143
A.	ARIA Fails to Address Significant Economic Issues	143
B.	ARIA Insufficiently Addresses Military and Strategic Issues	144
IX.	PROPOSED SOLUTION	146
A.	How ARIA Should Address Economic Issues	146
B.	How ARIA Should Address Military and Strategic Issues.....	146
C.	ARIA Moving Forward	147
X.	CONCLUSION	149

“China is a sleeping dragon that is just beginning to stir.”¹

I. INTRODUCTION

There is a shift in world power that can be felt by world leaders and ordinary citizens alike, and its movement will realign the rest of the world. Since its rise to a great world power after World War II, the United States has maintained its position as the world’s predominant leader, both militarily and economically. However, this dominance is threatened by a formidable challenger. A rapidly ascending China is challenging the United States’ military and economic power, but the United States is not adequately positioned to meet this challenge. Some scholars theorize that China and the United States are poised on a collision course for war unless both countries undertake difficult affirmative actions to construct an ongoing peaceful relationship.²

This Comment provides an overview of the current and potential challenges presented by China’s rise in power as well as the recent responses by the United States. Second, it will provide the historical context of the United States’ presence in the South China Sea by examining the military and economic benefits that the United States has achieved since World War II. Third, this Comment explores recent events in the South China Sea that enable a better understanding of both China’s intentions and the political and economic pressures applied by China to its regional neighbors. Finally, this Comment analyzes the Asia Reassurance Initiative Act (ARIA) which was signed into law by President Trump to address the rising geopolitical issues in the South China Sea.

1. *The Office: China* (NBC television broadcast Dec. 2, 2010).

2. GRAHAM ALLISON, *DESTINED FOR WAR* vii (Houghton Mifflin Harcourt Pub. Company, 2017).

ARIA will be discussed at further length below, however a brief introduction is appropriate to understand the United States' current foreign policy approach in Asia. ARIA provides a broad statement of United States policy in the Indo-Pacific,³ which seeks to reassure its partners and strategic allies of the United States' continued commitment to the region.⁴ However, ARIA is not written as a doctrine for affirmative actions to construct a peaceful relationship with China. Instead, it provides a temporary placeholder in the attempt to maintain the status quo in the hopes of containing China.⁵ This Comment argues that the United States must reassess ARIA's limits to implement a revised policy that addresses the growing strength and influence of China on traditional United States economic partners and military allies. The United States should implement a policy that promotes continued strong economic and military strategies that can survive the periodic turnovers of presidential administrations. By promoting consistency in these policies and military support, the United States is more likely to instill confidence in its allies and partners in Asia who are otherwise subject to greater pressure to acquiesce to China's ongoing campaign.

This Comment is neither written to object to the rise of China, nor to serve as a call to action by the United States to reestablish itself as the predominant leader in Asia. Rather, the Comment is intended as a wake-up call for the United States. China has increased its tendency to undermine the pillars of peace and stability in Asia that have enabled the growth and

3. The terms "Indo Pacific" and "Asia Pacific," which are both used throughout this Comment, may appear to be interchangeable based on context. However, there are important differences. The term "Indo-Pacific" refers to the region running from Eastern Africa to the Pacific Ocean, whereas the term "Asia-Pacific" traditionally referred to the Asian continent and Pacific Ocean. However, the United States has recently been using the "Indo-Pacific" term to replace the "Asia-Pacific" term. Some scholars theorize that this is a change in the foreign policy posture of the U.S. to shift the focal point of the region away from Asia, which is largely dominated by China. See Angaindrankumar Gnanasagaran, *Between "Indo-Pacific" and "Asia-Pacific"*, THE ASEAN POST (Nov. 18, 2017), <https://theaseanpost.com/article/between-indo-pacific-and-asia-pacific> [<https://perma.cc/Q7G5-JQTQ>]; Tashny Sukumaran, *What's the Difference Between Indo Pacific and Asia-Pacific? Regional Control for the US or China*, SOUTH CHINA MORNING POST (June 24, 2019), <https://www.scmp.com/news/asia/diplomacy/article/3015892/whats-difference-between-indo-pacific-and-asia-pacific-regional> [<https://perma.cc/28KU-HKY5>].

4. ARIA states that "[w]ithout strong leadership from the United States, the international system . . . may wither" therefore it is "imperative that the United States continue to play a leading role in the Indo-Pacific. See MICHAEL F. MARTIN ET AL., CONG. RSCH. SERV., IF11148, THE ASIA REASSURANCE INITIATIVE ACT (ARIA) OF 2018 (2019).

5. *Id.*

success of China and its neighbors.⁶ However, the United States' recent responses are emblematic of an American acceptance or acquiescence to China's disruptions.⁷

II. LEGAL ANALYSIS & ISSUES

A. Introduction

Currently, the United States and China are in a precarious position. To manage China's growth and prepare itself for the rise of China as a world power, the United States needs to take aggressive steps. These steps include policies that can shape China's choices in positive directions and channel its rise and nationalistic ambitions towards norms of cooperation rather than coercion.⁸ In addition, the United States should seek to reinforce and reestablish relationships with important allies and trading partners in the Asia-Pacific region.

B. Recent Economic Events

1. United States' Withdrawal from the Trans-Pacific Partnership

Recent actions by the United States, including its withdrawal from the Trans-Pacific Partnership (TPP), have bolstered China's expansion of power and influence in the Asia-Pacific.⁹ After the United States withdrew from the TPP, China moved in to fill the void with its economic development strategies like the Belt and Road Initiative (BRI) and the Made in China 2025 strategy.¹⁰

6. Ash Carter, *Reflections on American Grand Strategy in Asia*, BELFER CTR. FOR SCIENCE & INT'L AFF., HARV. KENNEDY SCH. (Oct. 2018), <https://www.belfercenter.org/publication/reflections-american-grand-strategy-asia> [<https://perma.cc/9H8Q-L76N>].

7. See, e.g., the United States' withdrawal from the Trans-Pacific Partnership (TPP) which provided space for China to expand its economic influence in Asia. By avoiding the TPP, the United States missed an opportunity to strengthen its relationships in Asia by providing assistance to existing trade allies in the region to counter China's economic leverage. See *id.*

8. Douglas H. Paal, *America's Future in a Dynamic Asia*, CARNEGIE ENDOWMENT FOR INT'L PEACE (Jan. 31, 2019), <https://carnegieendowment.org/2019/01/31/america-s-future-in-dynamic-asia-pub-78222> [<https://perma.cc/B8TP-QHWH>].

9. *Why Trump's Withdrawal from the TPP is a Boon for China*, SOUTH CHINA MORNING POST (Jan. 24, 2017, 2:15 PM), <https://www.scmp.com/news/world/united-states-canada/article/2064927/why-trumps-withdrawal-tpp-boon-china> [<https://perma.cc/CJ2P-XXGH>].

10. The United States and some countries in Asia view the Belt and Road Initiative (BRI) as a possible Trojan horse for Chinese regional development and military expansion. See Andrew Chatzky & James McBride, *China's Massive Belt and Road Initiative*, COUNCIL

In 2013, Chinese President Xi Jinping announced the launch of the BRI as a means to establish a vast network of railways, energy pipelines, highways, and streamlined border crossings to be spread throughout the Asian continent and the rest of Southeast Asia.¹¹ These plans also include expanding maritime traffic and increasing Chinese investment in port development.¹² Analysts view the launch of the BRI as China's retaliation against the United States for refocusing on Asia.¹³ Analysts identify the initiative as a means for China to develop new investment opportunities, cultivate new markets, and increase domestic consumption.¹⁴

The Trump Administration has stressed that there are significant risks posed to countries benefitting from China's assistance, and they may incur debts that they cannot pay.¹⁵ These debts will make them vulnerable to Chinese political pressure, resulting in otherwise unfavorable practices like hosting military bases.¹⁶ Although the Trump Administration is aware of the dangers posed by China's ability to apply pressure to its neighbors, the Trump Administration's actions continue to perpetuate these dangers.¹⁷

2. *The United States & China Sign "Phase One" of the Trade Agreement*

On January 15, 2020, the United States and China signed "Phase One" of the Economic and Trade Agreement Between the Government of the United States of America and the Government of the People's Republic of China (Trade Agreement).¹⁸ The signing of the Trade Agreement is meant

ON FOREIGN REL. (May 21, 2019), <https://www.cfr.org/background/chinas-massive-belt-and-road-initiative> [<https://perma.cc/3HNX-D9TW>].

11. Chatzky & McBride, *supra* note 10.

12. *Id.*

13. *Id.*

14. *Id.*

15. Michael Schuman, *The U.S. Can't Make Allies Take Sides Over China*, THE ATLANTIC (Apr. 25, 2019), <https://www.theatlantic.com/international/archive/2019/04/us-allies-washington-china-belt-road/587902/> [<https://perma.cc/5MKJ-NJNG>].

16. Paal, *supra* note 8.

17. These dangers include China's enhanced military capabilities which have undertaken significant modernization efforts since at least 2015 to transform China's military structure, including a modern 300 ship navy with modern capable equipment and weaponry. Recent military developments with China are discussed further below. *See id.*

18. *See* Economic and Trade Agreement Between the United States of America and the People's Republic of China, China-U.S., Jan. 15, 2020, https://ustr.gov/sites/default/files/files/agreements/phase%20one%20agreement/Economic_And_Trade_Agreement

to pause the escalating trade tensions between the world's two largest economies.¹⁹ For the time being, the Trade Agreement has paused the escalating trade war with China.²⁰ Despite the Trade Agreement's cooling off effect on the trade tensions with China, there are concerns about the viability of the deal if one party implements the Trade Agreement's dispute resolution clause.²¹ This clause states that if either side fails to uphold its end of the Trade Agreement, then the dispute resolution clause can be used to allow the other party to retaliate, which includes the possible imposition of further trade tariffs.²²

3. *The Economic Effect of the Coronavirus*

The Trade Agreement was not designed to withstand rapid shifts in global trade. The recent spread of the Coronavirus Disease threatens to overturn the world economy and may drastically impact economic stability between the United States and China.²³ The effects of the virus could have the effect of shutting down the economies of Japan, South Korea, Europe, and even the United States.²⁴ Although this Comment focuses on the long-term effects and consequences of United States trade in Asia, the spread of coronavirus is particularly concerning for both China and the United States in the short term and long term. Coronavirus's presence in China resulted in significant closures of Chinese factories and led to a massive shock to the Chinese economy.²⁵ The spread of the disease also caused

Between_The_United_States_And_China_Text.pdf [<https://perma.cc/UU7L-249K>] [hereinafter Trade Agreement].

19. Among the agreements of the "Phase One" deal, China is now required to purchase \$200 billion worth of goods above what it had purchased in 2017, for years 2020 and 2021. *See id.* art. 6.2.

20. James Politi, *US and China Sign Deal to Pause Trade War*, FIN. TIMES (Jan. 15, 2020), <https://www.ft.com/content/54d703e4-37b4-11ea-a6d3-9a26f8c3cba4> [<https://perma.cc/4S7Y-BZB4>].

21. Trade Agreement, *supra* note 18, at art. 7.3.

22. *Id.*; Chad P. Bown, *Unappreciated Hazards of the US-China Phase One Deal*, PETERSON INST. INT'L ECON. (Jan. 21, 2020, 5:00 AM), <https://www.piie.com/blogs/trade-and-investment-policy-watch/unappreciated-hazards-us-china-phase-one-deal> [<https://perma.cc/3FUH-ZZRP>].

23. Bown, *supra* note 22.

24. Alexandra Stevenson, *China Stopped Its Economy to Tackle Coronavirus. Now the World Suffers*, N.Y. TIMES (Mar. 6, 2020), <https://www.nytimes.com/2020/03/02/business/economy/china-coronavirus-economy.html> [<https://perma.cc/78HC-TH72>].

25. Martha C. White, *Coronavirus Has Potential to Shake Up China Trade More Than Tariffs*, NBC NEWS (Mar. 5, 2020, 9:39 AM), <https://www.nbcnews.com/business/economy/coronavirus-has-potential-shake-china-trade-more-tariffs-n1150571> [<https://perma.cc/D428-J6EX>].

economists and trade analysts to doubt China's capability to buy the required \$200 billion in additional American exports.²⁶

C. Recent Events Affecting U.S. Military and Strategic Relationships

As mentioned above and later in this Comment, the TPP would have had a remarkable effect on companies based in the United States and partners in Asia. When the Trump Administration abandoned the TPP, it failed to recognize the significance of the TPP's effect on military and security aspects. By adhering to the TPP and strengthening its relationships with regional partners, the United States would be able to bolster its trading network outside of China and, in turn, bolster its national security against a rising China.²⁷ Former Secretary of Defense, Ash Carter,²⁸ often said that the TPP was as important, militarily and strategically, as an aircraft carrier.²⁹

In addition to China's economic development strategies, the United States must also address ongoing military confrontations with China. The current maritime territorial disputes in the East and South China Seas raise concerns about possible conflicts between China, the United States, and neighboring countries, such as Japan or the Philippines.³⁰ These conflicts could force the United States to become involved given its bilateral security treaties with Japan and the Philippines.³¹

One of the most prominent frameworks used by analysts to understand U.S.-China relations is the Thucydides Trap,³² which was coined by Professor Graham Allison.³³ The Thucydides Trap refers to the "almost inevitable

26. Catherine Boudreau, *Coronavirus May Undercut China's Phase-One Farm Purchases*, POLITICO (Mar. 10, 2020, 10:00 AM), <https://www.politico.com/newsletters/morning-agriculture/2020/03/10/coronavirus-may-undercut-chinas-phase-one-farm-purchases-785967> [<https://perma.cc/698G-9CWZ>].

27. Carter, *supra* note 6.

28. In addition to his service as the U.S. Secretary of Defense from 2015-2017, Ash Carter is also regarded as an expert in foreign relations in Asia and designed and executed the U.S. strategic pivot to the Asia-Pacific. *See Ash Carter*, BELFER CTR. FOR SCI. & INT'L AFF., HARV. KENNEDY SCH., <https://www.belfercenter.org/person/ash-carter> [<https://perma.cc/K852-L5DQ>].

29. Carter, *supra* note 6.

30. RONALD O'ROURKE, CONG. RSCH. SERV., R42784, U.S.-CHINA STRATEGIC COMPETITION IN SOUTH AND EAST CHINA SEAS: BACKGROUND AND ISSUES FOR CONGRESS (Aug. 28, 2020).

31. *Id.*

32. Paal, *supra* note 8.

33. Graham Allison is a professor of government at Harvard University and is a leading analyst of national security with special interests in China and decision-making. For a more

tendency for relations between an established declining power and a rising one to devolve into direct competition and conflict.”³⁴ According to Professor Allison, the ancient Greek historian Thucydides wrote about a war that devastated Sparta and Athens, the two leading city-states in classical Greece.³⁵ Further, Thucydides theorized that “[i]t was the *rise* of Athens and the fear that this instilled in Sparta that made war inevitable.”³⁶ It is important to note however, that both Dr. Allison and Thucydides meant ‘inevitable’ as a hyperbole.³⁷ The potential for armed conflict between China and the United States is significantly more likely if they continue on their current paths.³⁸ Each side must recognize the threats and underlying stresses between the two nations to construct a peaceful relationship.³⁹

Although the relationship shared between the United States and China is arguably much more complicated than the conflict between Sparta and Athens, the analytical framework is still useful in understanding the inevitable unease accompanying the shift in power from the United States to China.⁴⁰ The impact of China’s rise to power will be felt most directly by the current world leader, the United States.⁴¹ Professor Allison states that, as China gets bigger, stronger, more prosperous, and technologically more advanced, it will inevitably aggravate American positions and prerogatives.⁴² Thus, the United States must recognize this dilemma and take affirmative action to balance the shifting of power and prevent military conflict.

III. HISTORICAL OVERVIEW OF U.S. INVOLVEMENT IN THE SOUTH CHINA SEA

An analysis of the current developments surrounding the United States in the South China Sea requires starting from the conclusion of World War II. Japan’s surrender to the United States on August 14, 1945, ushered in a historic shift of global power measured by the increase in active U.S. naval ships across the globe.⁴³ This shift created a lasting United States

detailed background on Professor Allison, *see Graham Allison*, HARVARD, <https://www.hks.harvard.edu/faculty/graham-allison> [<https://perma.cc/5RNS-7TPU>].

34. Paal, *supra* note 8.

35. ALLISON, *supra* note 2, at vii.

36. *Id.*

37. *Id.* at viii.

38. *Id.* at vii.

39. *Id.* at ix.

40. Paal, *supra* note 8.

41. TED, *Is War Between China and the US Inevitable: Graham Allison*, YOUTUBE (Nov. 20, 2018), <https://www.youtube.com/watch?v=XewnyUJgyA4> [<https://perma.cc/8ZSL-WZQ8>].

42. *Id.*

43. Prior to the beginning of World War II in 1939, the United States only had approximately 394 active U.S. Navy ships. However, by Japan’s surrender in 1945, the

military presence in Asia that shaped the explosive growth of the United States that has continued to this day.⁴⁴ The United States “enjoyed an unchallenged ascendancy, or what some call [an American] primacy in these domains.”⁴⁵ This primacy was established by a dominant U.S. Navy presence in the territories formerly occupied by Japan in the South Pacific and by forming strong ties with South Korea and the Philippines.⁴⁶ At that time, the United States had the most powerful navy in the world.⁴⁷

Subsequent conflicts in Southeast Asia were also instrumental in establishing U.S. influence and military presence in the region.⁴⁸ Even though the United States ultimately emerged unsuccessful following the Vietnam War, it nonetheless acquired an advantageous strategic position in Southeast Asia by forming alliances with Thailand and the Philippines, and establishing “friendly ties with Singapore, Malaysia, and Indonesia.”⁴⁹ Following the end of the conflict on the Korean Peninsula, and then the withdrawal from Vietnam, the United States has relied on its alliances and arrangements with friendly powers to support its maritime and air presence in Southeast Asia.⁵⁰ By the mid-1990s, United States forces patrolled the region, including the South China Sea, unchallenged and benefitted from agreed access to ports⁵¹ throughout much of the area.⁵²

United States Navy had approximately 6,768 active ships across the globe. *See US Ship Force Levels*, NAVAL HIST. & HERITAGE COMMAND (Aug. 17, 2017, 8:03 AM), <https://www.history.navy.mil/research/histories/ship-histories/us-ship-force-levels.html#1938> [<https://perma.cc/6EVD-7S6Q>].

44. *See* Tom O'Connor, *V-J Day: U.S. Military Power in Asia Grew After World War II, But Do We Still Need Bases There?*, NEWSWEEK (Aug. 14, 2018, 5:00 AM), <https://www.newsweek.com/us-military-power-asia-grew-world-war-two-do-we-need-bases-there-1070931> [<https://perma.cc/7JVA-F4L6>].

45. *See* Paal, *supra* note 8.

46. *See* Marvin Ott, *The South China Sea in Strategic Terms*, WILSON CTR. (May 14, 2019), <https://www.wilsoncenter.org/blog-post/the-south-china-sea-strategic-terms> [<https://perma.cc/L3XG-DVVK>].

47. *See* Kyle Mizokami, *5 Most Powerful Navies of All Time*, THE NAT'L INT. (July 12, 2015), <https://nationalinterest.org/feature/5-most-powerful-navies-all-time-13311> [<https://perma.cc/SCW5-7RJX>].

48. *See* Ott, *supra* note 46.

49. *See id.*

50. *See* Paal, *supra* note 8.

51. *See* Ott, *supra* note 46.

52. The U.S. force in this region includes roughly 28,500 American troops stationed in South Korea, 5,000 troops stationed on Guam, and 50,000 troops stationed in Japan, including more than 20,000 troops who are stationed permanently at airbases within the country. Agence France-Presse, *The US has a Massive Military Presence in the Asia-Pacific. Here's What You Need to Know About It*, THE WORLD (Aug. 11, 2017, 4:00 PM), <https://>

The United States understood the strategic importance of assisting these countries and used their access as a launching point to advance American interests. The alliance created between the United States and Japan after WWII reconciled the two enemy nations and laid the groundwork for the reconstruction of Japan, which rose to become the world's second-largest economy.⁵³ While the alliance was just between the two countries, it had a significant impact on Asia as a whole and is regarded by many countries as an essential piece of the region's security structure.⁵⁴ Partnering with these Asian countries and providing them with assistance helped to advance America's core national security interests by promoting economic development and regional stability, while also opening and expanding international markets for U.S. businesses.⁵⁵

Furthermore, the partnerships have helped to empower these Asian countries to become self-reliant and have also assisted in their transformation from war-torn nations into thriving economies.⁵⁶ The result of increased United States presence led to remarkably fewer serious threats to peace in the region.⁵⁷ Japan, for example, was able to redistribute its resources from security to economic development, which resulted in a massive boom in economic expansion and a notable increase in living standards.⁵⁸ This economic success was mirrored in countries like South Korea, Taiwan, and China, which replicated Japan's success with foreign aid and investment opportunities, leading to even faster rates of economic growth and higher living standards.⁵⁹ Essentially, the ties created between the United States and these Asian countries have produced an inclusive network that encourages regional and international integration.⁶⁰

The deep integration of the United States' economic influence and military support throughout the South China Sea and the surrounding region facilitated the growth of the United States as a world power.⁶¹ In addition to its massive growth, the United States' development into a world power

www.pri.org/stories/2017-08-11/us-has-massive-military-presence-asia-pacific-heres-what-you-need-know-about-it [<https://perma.cc/JCP2-RXT8>].

53. William Breer, *U.S. Alliances in East Asia: Internal Challenges and External Threats*, BROOKINGS (May 12, 2010), <https://www.brookings.edu/opinions/u-s-alliances-in-east-asia-internal-challenges-and-external-threats/> [<https://perma.cc/9ZVB-EHA6>].

54. *Id.*

55. Patrick Christy, *America's Proud History of Post-War Aid*, U.S. NEWS & WORLD REP. (June 6, 2014, 5:30 PM), <https://www.usnews.com/opinion/blogs/world-report/2014/06/06/the-lessons-from-us-aid-after-world-war-ii> [<https://perma.cc/QE34-3X69>].

56. *Id.*

57. Breer, *supra* note 53.

58. *Id.*

59. *Id.*

60. Christy, *supra* note 55; *see also* Carter, *supra* note 6.

61. *See* Ott, *supra* note 46.

also ushered many of its regional allies and partners into economic prosperity.⁶² The security provided by the increased United States military presence paired with the development of institutions, such as the Association of Southeast Asian Nations (ASEAN),⁶³ nurtured economic growth and regional modernization.⁶⁴

Although the United States has no territorial claim in the South China Sea and does not claim sovereignty over any of the geographic features in the Sea, the United States is still heavily invested in preventing the rise of a regional hegemon in that part of the world.⁶⁵ Following the end of WWII, the United States maintained its position as the most influential country in the South China Sea and surrounding regions; however, the United States is now facing a strong challenger in China.⁶⁶ China's recent actions are raising concerns that it may be making affirmative efforts to dominate the South China Sea, with the ultimate goal of making China a regional hegemon that will assert influence or control over current United States trade partners and strategic military allies.⁶⁷

IV. HOW THE UNITED STATES BENEFITS FROM THE SOUTH CHINA SEA

A. Current Economic Value

The famous English adventurer Sir Walter Raleigh once said, “[f]or whosoever commands the sea commands the trade; whosoever commands the trade of the world commands the riches of the world, and consequently the world itself.”⁶⁸ Raleigh's words are mirrored in the recent struggle for command over the South China Sea and the surrounding region. Economic and militaristic control over the South China Sea are both pivotal in balancing

62. *Id.*

63. ASEAN is an intergovernmental organization aimed at promoting economic growth and regional stability among its members, which include Indonesia, Malaysia, Philippines, Singapore, Thailand, Brunei, Laos, Myanmar, Cambodia, and Vietnam. Johnny Wood, *What is ASEAN?*, WORLD ECON. F. (May 9, 2017), <https://www.weforum.org/agenda/2017/05/what-is-asean-explainer/> [<https://perma.cc/K4JA-B3W3>].

64. *See* Ott, *supra* note 46.

65. BEN DOLVEN ET AL., CONG. RSCH. SERV., IFI0607, SOUTH CHINA SEA DISPUTES: BACKGROUND AND U.S. POLICY (Feb. 23, 2017).

66. *Id.*

67. *Id.*

68. *See* Genevieve Wanucha, “For Whosoever Commands the Sea Commands the Trade,” MIT MECHÉ (Jan. 13, 2014), <http://meche.mit.edu/news-media/-whosoever-commands-sea-commands-trade> [<https://perma.cc/TH2P-PUB4>].

the power struggle in the Indo-Pacific between the United States, China, and other regional powers.⁶⁹

The sea-lanes of the South China Sea are some of the most valuable, busiest, and important waterways in the world.⁷⁰ Analysts estimate that over 3.4 trillion dollars' worth of goods passed through these lanes in 2016, which amounted to an astounding one-third of all global shipping that year.⁷¹ Additionally, over 64% of China's maritime trade passed through the South China Sea in 2016, which is a noteworthy amount considering China's looming presence as a world-leading economy.⁷² China is estimated to have a 14.8% share of the world gross domestic product, which is worth an estimated trade value of \$1.47 trillion.⁷³ In addition to the South China Sea's significance with global trade as a whole, approximately two-thirds of the world's oil shipments pass through these lanes from the Indian Ocean to the Pacific Ocean, with much of it heading to a growing and energy-dependent China.⁷⁴ Although the United States relies less on the South China Sea than China, "with just over 14% of its maritime trade passing through the region,"⁷⁵ control over the South China Sea carries significant economic implications that demand attention from the United States.⁷⁶

69. See Michael D. Swaine et al., *Creating a Stable Asia: An Agenda for a U.S.-China Balance of Power*, CARNEGIE ENDOWMENT FOR INT'L PEACE 13 (2016), https://carnegieendowment.org/files/CEIP_Swaine_U.S.-Asia_Final.pdf [<https://perma.cc/MW3K-B5PL>].

70. Ott, *supra* note 46.

71. *Id.*

72. *How Much Trade Transits the South China Sea?*, CHINAPOWER, <https://chinapower.csis.org/much-trade-transits-south-china-sea/> [<https://perma.cc/57EG-6X66>] [hereinafter *Trade Transits*].

73. *Id.*

74. Roncevert Ganan Almond, *Trade, War, and the South China Sea*, THE DIPLOMAT (Sept. 1, 2018), <https://thediplomat.com/2018/09/trade-war-and-the-south-china-sea/> [<https://perma.cc/FFM7-N3AY>].

75. See *Trade Transits*, *supra* note 72.

76. For an interesting overview of the exact values of trade between China, the United States, and other countries across the world, see *Top Trading Partners – December 2019*, U.S. CENSUS BUREAU, <https://www.census.gov/foreign-trade/statistics/highlights/top/top1912yr.html> [<https://perma.cc/7GFK-3NZN>]. See also Raul Amorós, *The World's \$86 Trillion Economy Visualized in One Chart*, HOWMUCH.NET (Aug. 15, 2019), <https://howmuch.net/articles/the-world-economy-2018> [<https://perma.cc/4RW6-EBCU>].

Country	% Share of World GDP	Trade Value through South China Sea (USD billions)	South China Sea Trade As % of All Trade in Goods
United States	24.5	208	5.72
China	14.8	1470	39.5

TRADE TRANSITS IN THE SOUTH CHINA SEA⁷⁷

With its current foreign trade approaches, the United States is losing its economic partners and strategic allies in Asia, creating a vacuum that China is preparing to occupy.⁷⁸ The United States is losing partners in Asia due to their unpredictable responses in the region and their failures to act when needed.⁷⁹ Affirmative actions like the withdrawal from TPP and President Trump's embrace of authoritarian leaders like Kim Jon-un and Xi Jinping fail to send strong signals to established allies of the United States' support and reliability.⁸⁰ The withdrawal from the TPP damaged the United States' credibility with regional partners as a proponent of free trade and further jeopardized the possibility of future trade agreements.⁸¹ Additionally, the United States further damaged its reliability "by reopening [the North American Free Trade Agreement] negotiations and threatening South Korea with renegotiating the Korea-U.S. Free Trade Agreement."⁸²

Finally, by taking a sideline approach to many of the rising issues in the region, the United States further bolstered this lack of confidence. President

77. The second most active Asian country in the South China Sea, Japan, only has a trade value of USD \$240 billion through the South China Sea amounting to 19.1% of all trade in goods in the South China Sea. See *Trade Transits*, *supra* note 72.

78. *Why Trump's Withdrawal from the TPP is a Boon for China*, *supra* note 9; Edward Wong, *Waning of American Power? Trump Struggles with an Asia in Crisis*, N.Y. TIMES (Aug. 13, 2019), <https://www.nytimes.com/2019/08/13/world/asia/trump-asia.html> [<https://perma.cc/8C2M-6EDS>] (discussing the effects of the United States' "hands off" approach in Asia).

79. See Wong, *supra* note 78.

80. *Id.*

81. John Schaus, *The Limits of Good Strategy: The United States in the Asia Pacific in 2018*, CTR. FOR STRATEGIC & INT'L STUD. (Feb. 2, 2018), <https://www.csis.org/analysis/limits-good-strategy-united-states-asia-pacific-2018> [<https://perma.cc/Q89A-3DDZ>].

82. *Id.*

Trump stated that the United States and China are “strategic partners” and notably, the administration held back from taking actions that may upset Beijing, like failing to send strong signals about the United States’ position on the Hong Kong pro-democracy protests.⁸³ These approaches taken by the United States form a pattern that leaves world leaders, and many leaders in Asia, lacking confidence that the United States under the current administration has the willingness or ability to lead in global affairs and perpetuate stability in Asia.⁸⁴

Without properly addressing the potential loss of control in the region, the United States faces the potential of losing significant trade partners and ultimately its dominant position as the leading economic power in the Pacific. Decisions like the United States’ withdrawal from the TPP signal to other countries the end of free trade led by the United States in the South China Sea.⁸⁵ China can now regulate how regional trade is conducted, which will have a ripple effect on China’s financial and political ties with other countries.⁸⁶ If the United States fails to regain influence, China will continue to fill the vacuum and use its massive economic and political power to control trade in the region.⁸⁷

B. Strategic Value of the South China Sea

The United States has a wide range of differing security commitments in East Asia and has formal defense and security alliances with Japan, South Korea, the Philippines, Thailand, and Australia.⁸⁸ In addition to formal commitments in the region, the United States also has a variety of formal security cooperation agreements with Vietnam, Indonesia, and Malaysia.⁸⁹ The United States also enjoys a large endowment of military equipment, including a massive stockpile of ships, aircrafts, and bases, and has extensive military experience.⁹⁰ In sum, the United States established and maintained a complex and dense network of security partnerships and obligations throughout Asia, which are sustained by the regular presence and contact of its military presence.⁹¹

83. Wong, *supra* note 78.

84. Schaus, *supra* note 81.

85. Peter Pham, *Why Did Donald Trump Kill This Big Free Trade Deal?*, FORBES (Dec. 29, 2017, 10:57 AM), <https://www.forbes.com/sites/peterpham/2017/12/29/why-did-donald-trump-kill-this-big-free-trade-deal/#6c97bd4e4e62> [https://perma.cc/83NE-PB9R].

86. *Id.*

87. *Id.*

88. See Ott, *supra* note 46.

89. *Id.*

90. See Paal, *supra* note 8.

91. See Ott, *supra* note 46.

Through this existing network of allies and friendly countries, the United States currently retains a huge advantage over China in the Asia Pacific—for the time being.⁹² However, the United States should not take this network for granted as China is rapidly increasing the size of its military and modernizing its military assets,⁹³ while the United States' military assets become outdated and its military presence in the region dwindles.⁹⁴ China's modernization and military growth create a growing challenge for U.S. policymakers by drawing significant issues that Congress must address about the United States' goals and strategy in the Asia Pacific.⁹⁵

If the United States continues to improperly address China's rise and growth in Asia the strategic consequences may devastate regional stability.⁹⁶ Southeast Asia faces the likely possibility of being subordinate to the overarching strength and will of China.⁹⁷ South Korea and Japan will also face a new reality with China in complete control of their trade routes by sea, and the credibility of U.S. security support for allies and partners will be completely decimated by the spread of Chinese control and influence in the region.⁹⁸

V. RECENT EVENTS IN THE SOUTH CHINA SEA

A. *Applicable International Law*

Several countries now lay claim to some part of the South China Sea,⁹⁹ with most countries laying claim based on the United Nations Convention on the Law of the Sea (UNCLOS), which states that a country's territorial waters extend 200 miles off of their shore, an area referred to as their Exclusive Economic Zone (EEZ).¹⁰⁰ In their EEZ, the coastal state possesses

92. See Paal, *supra* note 8.

93. *Id.*

94. See David Lague & Benjamin Kang Lim, *New Missile Gap Leaves U.S. Scrambling to Counter China*, REUTERS (Apr. 25, 2019, 11:00 AM), <https://www.reuters.com/investigates/special-report/china-army-rockets/> [<https://perma.cc/N5J3-2EJ7>].

95. DOLVEN ET AL., *supra* note 65.

96. See Ott, *supra* note 46.

97. *Id.*

98. *Id.*

99. See *South China Sea Dispute: China's Pursuit of Resources 'Unlawful'*, Says US, BBC (July 14, 2020), <https://www.bbc.com/news/world-us-canada-53397673> [<https://perma.cc/4NZ4-D5F7>].

100. O'ROURKE, *supra* note 30.

sovereign rights to the natural resources of the zone.¹⁰¹ Any area that falls outside of a country's EEZ is regarded as international waters.¹⁰² No nation or state can control the international waters, and each nation has unregulated liberty to take part in any water-related activities, such as fishing, constructing infrastructure, and research.¹⁰³

B. Maritime Disputes in the South China Sea

Although UNCLOS is widely accepted as law,¹⁰⁴ China is involved in several maritime and EEZ disputes in the South China Sea, where China is asserting territorial claims well within the EEZs of its regional neighbors.¹⁰⁵ China is a party to maritime territorial disputes over the Paracel Islands, which are claimed by both Vietnam and China.¹⁰⁶ Additionally, China, Taiwan, and Vietnam all claim the Spratley Islands while the Philippines, Malaysia, and Brunei also claim to own parts of the Spratleys.¹⁰⁷ There are additional quarrels over ownership of the Scarborough Shoal, which is claimed by China, Taiwan, and the Philippines.¹⁰⁸ China asserts that it has indisputable sovereignty over these islands and their adjacent waters based on historical claims to these areas.¹⁰⁹

101. United Nations Convention on the Law of the Sea, art. 56, Dec. 10, 1982, 1833 U.N.T.S. 397.

102. Joseph Kiprop, *What Does The Term "International Waters" Mean?*, WORLD ATLAS (May 10, 2018), <https://www.worldatlas.com/articles/what-does-the-term-international-waters-mean.html> [https://perma.cc/6MTG-2WS8].

103. *Id.*

104. As of this writing, UNCLOS has been ratified by a total of 162 countries and the European Union. See Aditya Singh Verma, *A Case for the United States' Ratification of UNCLOS*, THE DIPLOMATIST (May 2, 2020, 12:00 PM), <https://diplomatist.com/2020/05/02/a-case-for-the-united-states-ratification-of-unclos/> [https://perma.cc/ES6B-3EVS].

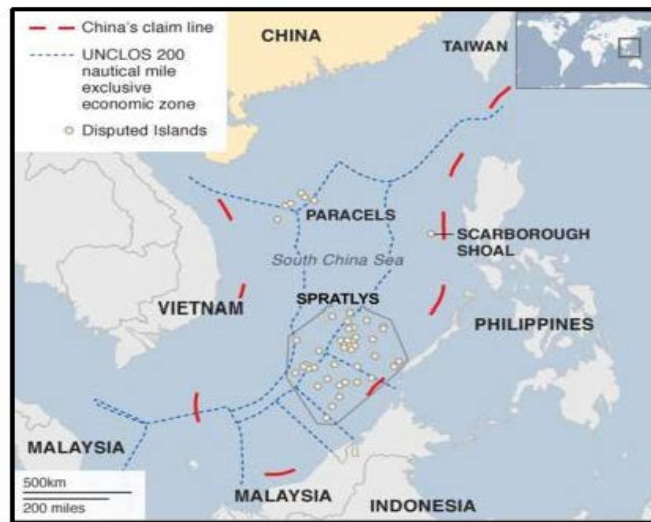
105. See Ott, *supra* note 46.

106. O'ROURKE, *supra* note 30, at 6.

107. *Id.* at 7.

108. *Id.*

109. DOLVEN ET AL., *supra* note 65; see also Bill Hayton, *China's 'Historic Rights' in the South China Sea: Made in America?*, THE DIPLOMAT (June 21, 2016), <https://thediplomat.com/2016/06/chinas-historic-rights-in-the-south-china-sea-made-in-america/> [https://perma.cc/9L48-7M7Q].

ISLAND DISPUTES IN THE SOUTH CHINA SEA¹¹⁰

In late 2015, China completed a campaign of land reclamation in the South China Sea on the Spratly Islands, where China added over 3,200 acres of land to seven of the landmasses in the Spratly Islands.¹¹¹ China is now using these artificial islands for a variety of military bases and civilian outposts.¹¹² Major construction features on some of the largest land masses included new airfields, large port facilities, and water and fuel storage.¹¹³ As of late 2016, major construction in these areas also included twenty-four fighter-sized hangars, fixed-weapons positions, barracks, administration buildings, and communication facilities.¹¹⁴ China claims it created these outposts to improve living and working conditions for those stationed

110. *Why is the South China Sea Contentious?*, BBC NEWS (July 12, 2016), <https://www.bbc.com/news/world-asia-pacific-13748349> [<https://perma.cc/6HP4-WPDW>].

111. O'ROURKE, *supra* note 30, at 55.

112. *See A Constructive Year for Chinese Base Building*, ASIA MAR. TRANSPARENCY INITIATIVE (Dec. 14, 2017), <https://amti.csis.org/constructive-year-chinese-building/> [<https://perma.cc/5DYZ-Y5AT>]; *see also* Luis Martinez, *Why the US Navy Sails Past Disputed Artificial Islands Claimed by China*, ABC NEWS (May 6, 2019, 8:32 AM), <https://abcnews.go.com/Politics/us-navy-sails-past-disputed-artificial-islands-claimed/story?id=60993256> [<https://perma.cc/JGN2-487X>].

113. O'ROURKE, *supra* note 30, at 55.

114. *Id.*

there, increase the safety of navigation, and improve research capabilities.¹¹⁵ However, many analysts contend that China is instead attempting to bolster its control over the region by improving its military and civilian infrastructure.¹¹⁶

Although the land reclamation and artificial islands do not legally strengthen China's territorial claims or create territorial sea entitlements, China is using these new features to bolster their claim in the South China Sea and improve China's control of the area.¹¹⁷ By increasing their presence in the region with these new features, China is able to significantly improve its ability to detect and challenge activities by rival claimants or third parties in the South China Sea, including military activities by the United States.¹¹⁸

In addition to the sovereignty disputes in the South China Sea, "the United States and China have a long-simmering disagreement over the right of foreign militaries to operate in the South China Sea."¹¹⁹ The United States contends that these areas are international waters and therefore, according to maritime law, they should be free to operate.¹²⁰ In support of its contentions, the United States continues to conduct freedom of navigation operations (FONOPs) in the South China Sea to contest China's increasing claims and military presence.¹²¹ China, however, insists that freedom of navigation in international waters should not cover military ships.¹²² The United States' decision to continue or decrease the frequency of these FONOPs will play a particularly important role in the regional stability of the South China Sea.

C. Disputes in the South China Sea Moving Forward

Despite the loss of the United States' influence and confidence in the region, issues in the South China Sea have begun to cool down, thanks to efforts made by China and ASEAN countries.¹²³ These efforts include

115. *Id.*

116. *Id.*

117. *See id.*

118. *Id.*

119. DOLVEN ET AL., *supra* note 65.

120. *See* Eleanor Freund, *Freedom of Navigation in the South China Sea: A Practical Guide*, BELFER CTR. FOR SCI. & INT'L AFF., HARV. KENNEDY SCH. (June 2017), <https://www.belfercenter.org/publication/freedom-navigation-south-china-sea-practical-guide> [<https://perma.cc/RD95-22AG>].

121. O'ROURKE, *supra* note 30, at 11–12.

122. *Id.*

123. Wu Shicun, *What's Next for the South China Sea?*, THE DIPLOMAT (Aug. 1, 2019), <https://thediplomat.com/2019/08/whats-next-for-the-south-china-sea/> [<https://perma.cc/TUV9-6G8J>].

improved economic and cultural engagement as well as security and maritime management, all of which are efforts to improve relations and pose new opportunities for advancement in Asia.¹²⁴ For example, in October 2018, the first China-ASEAN Joint Naval Exercise was held in the South China Sea, marking a new phase of maritime security cooperation and regional stability.¹²⁵ Additionally, the improved relationship between China and the Philippines laid a foundation for dispute resolution between the two countries in the South China Sea.¹²⁶

However, there are still a host of factors that may challenge these newfound improvements and advancements. Military activities and deployments made by the United States have steadily increased in response to the growing Chinese naval presence in the region.¹²⁷ The Trump Administration continues to increase FONOPs in the South China Sea, along with bilateral or multilateral joint military exercises, coast guard patrols, and other forms of collaboration with its allies and partners.¹²⁸ The United States is actively taking these measures to “maintain its overwhelming military advantage against China.”¹²⁹

In sum, the United States must carefully balance its objectives to secure regional stability in the area with its desire to maintain a dominant military presence in the territory. China threatens to undermine the United States’ influence and control as it successfully builds mutually beneficial relationships with formerly contentious neighbors.¹³⁰ As a result, China has obtained notable success in consolidating its position in the South China Sea while also undermining American credibility.¹³¹ Moving forward, the strategic and military competition between China and the United States will continue to be a critical factor in future developments in the South China Sea.¹³²

124. *Id.*

125. *Id.*

126. *Id.*

127. *Id.*

128. *Id.*

129. *Id.*

130. Many of these non-military advantages from China are often overlooked even though they are creating significant deterrence from affected countries to put up strong resistance. See LYNN KUOK, BROOKINGS INST., *HOW CHINA’S ACTIONS IN THE SOUTH CHINA SEA UNDERMINE THE RULE OF LAW* 1 (2019).

131. *Id.*

132. See Shicun, *supra* note 123.

VI. COUNTRIES FACING PRESSURE BY CHINA

China's development of islands in the South China Sea and its economic strategies are playing out in dangerously close proximity to important regional partners of the United States.¹³³ If these actions by China are left unchecked, there is a significant risk of "jeopardizing decades of security and prosperity in Asia."¹³⁴ China's goal is not necessarily to physically force out the United States' presence in these countries or prevent rotational deployments or joint-exercises in the Asia-Pacific, but rather to eliminate or limit the United States' influence over countries in the region.¹³⁵ In both China and the United States, there is a belief that if China establishes regional military superiority over the United States, it will be able to force the United States out of the Asia-Pacific.¹³⁶ Fortunately for the United States, it will be far more difficult for China to transform its military presence into political influence.¹³⁷

Economically, China is pursuing several approaches towards gaining economic influence with its regional neighbors to get around the United States' presence and control. The Belt and Road Initiative (BRI) is one of China's approaches towards achieving this goal.¹³⁸ The BRI project is estimated to affect 65% "of the world's population, one-third of the world's GDP . . . and three-quarters of the world's energy sources."¹³⁹ Scholars state that the purpose of the BRI is to power continuing economic growth and lay the foundation for further economic stability.¹⁴⁰ The BRI aims to achieve this goal through sustained and increased access to energy since the BRI will "promote cooperation in the connectivity of energy infrastructure . . . and [will increase cooperation] in regional power grid upgrading and transformation."¹⁴¹

Although these goals seemingly appear to be quite beneficial for all parties involved, there are several factors that must be considered regarding the

133. *See id.*

134. Carter, *supra* note 6.

135. Andrei Lungu, *China is Blowing its Chance in the Asia-Pacific*, FOREIGN POL'Y (Dec. 12, 2019, 10:50 AM), <https://foreignpolicy.com/2019/12/12/china-asia-pacific-blowing-chance/> [<https://perma.cc/G58T-4K3X>].

136. *Id.*

137. *Id.*

138. China's Belt and Road Initiative is designed to "connect Asia with Africa and Europe via land and maritime networks . . . with the aim of improving regional integration, increasing trade, and stimulating economic growth." *Belt and Road Initiative (BRI)*, EUR. BANK FOR RECONSTRUCTION & DEV., <https://www.ebrd.com/what-we-do/belt-and-road/overview.html> [<https://perma.cc/JW3C-M7K9>].

139. Wendy Simon-Pearson, *One Belt, One Road, One Treaty: China's Energy Security and the Energy Charter Treaty*, 9 GEO. WASH. J. ENERGY & ENV'T L. 112, 113 (2018).

140. *Id.*

141. *Id.*

BRI's shift of regional power and influence. For example, one of the major prospects of the BRI is the China-Pakistan Economic Corridor (CPEC), which "addresses China's unease with American naval control of the South China Sea."¹⁴² A major factor of the CPEC is its ability to transfer energy and goods from China's western provinces to the Indian Ocean, where they are not subject to the United States' naval patrols.¹⁴³ This factor is important in the overall rebalancing of power between China, the United States, and other countries in the region. The foundation laid by the BRI will be an "important part of Chinese trade and investment initiatives [with its neighbors] that [will] advance economic integration and promote greater economic reliance on China."¹⁴⁴ Additionally, the BRI sends a message to the world that China is no longer biding its time and maintaining a low profile.¹⁴⁵ Instead, China is now explicitly stating a foreign policy that reflects China as Asia's dominant power.¹⁴⁶

In addition to its approaches towards improving infrastructure in the region, China is also applying different sources of pressure and influence on its neighbors that are important to consider. For example, the countries discussed below currently experience economic pressure or military aggression by China.

A. The Philippines

In the Philippines, a longstanding military partner to the United States, Filipino President Duterte forged closer ties with China since rising to power in 2016, and in turn, China invested billions into the Philippines.¹⁴⁷ However, disputes in the South China Sea between the Philippines and China are testing these ties.¹⁴⁸ In 1995, the Philippines discovered that China had unilaterally constructed structures on Mischief Reef in the

142. *Id.* at 112.

143. *See id.*

144. Joshua P. Meltzer, *China's One Belt One Road Initiative: A View from the United States*, BROOKINGS (June 19, 2017), <https://www.brookings.edu/research/chinas-one-belt-one-road-initiative-a-view-from-the-united-states/> [<https://perma.cc/Y24F-T66Z>].

145. *Id.*

146. *Id.*

147. *See As China Invests Billions in the Philippines, Tensions Flare Over South China Sea*, HERE & NOW (July 10, 2019), <https://www.wbur.org/hereandnow/2019/07/10/china-philippines-south-china-sea> [<https://perma.cc/GUY3-RT8A>].

148. *Id.*

South China Sea.¹⁴⁹ Over time, “China began to occupy other uninhabited reefs and low-tide elevations that were internationally adjudicated to [the Philippines by UNCLOS].”¹⁵⁰ Even after the Permanent Court of Arbitration delivered a decision in 2016 that invalidated Chinese claims to the landmasses in the South China Sea, China ignored the result and continued its occupation and construction of military structures in the area.¹⁵¹

Since President Duterte came into power, China has accelerated its creation and militarization of islands in the South China Sea.¹⁵² In addition to its occupation and activities on these islands, the Chinese militia in the South China Sea bullies and pressures Filipino fishing vessels; in one instance sinking a ship, abandoning the scene, and leaving its twenty-two occupants afloat in the ocean.¹⁵³ President Duterte downplayed the incident, describing the sinking of the ship as a “little maritime accident.”¹⁵⁴ However, this is not the only incident where the Philippines ceded ground and acquiesced to China. For example, President Duterte explained the presence of Chinese fishing vessels in the Philippines’ EEZ by claiming that he had a verbal agreement with Beijing in 2016 that gave China the right to fish in these waters.¹⁵⁵ By ceding these waters to China, President Duterte further bolstered China’s claims to the region to the detriment of the Philippines and its own claims to the waterways.¹⁵⁶

These recent events between the Philippines and China ought to place the United States on notice of China’s steadily increasing influence both in the region and on historically steadfast American allies in the South China Sea. President Duterte’s acquiescence to Chinese pressure is compelled by the Philippines’ precarious geographical and political position.

149. Paal, *supra* note 8.

150. *Id.*

151. *Id.*; see also *The Republic of Phil. v. The People’s Republic of China*, Case No. 2013-19, Certified Award (Perm. Ct. Arb. 2013), <https://pcacases.com/web/sendAttach/2086>.

152. See *As China Invests Billions in the Philippines, Tensions Flare Over South China Sea*, *supra* note 147.

153. Raissa Robles, *Chinese Vessel Mainly to Blame for Sinking of Philippine Boat in South China Sea, but Filipino Crew had ‘Deficiencies’*: Leaked Report, *THIS WEEK IN ASIA* (July 8, 2019, 9:00 PM), <https://www.scmp.com/week-asia/geopolitics/article/3017757/chinese-vessel-mainly-blame-sinking-philippine-boat-south> [<https://perma.cc/J3FU-BKQ7>].

154. KUOK, *supra* note 130, at 7.

155. *Id.*

156. *Id.*

B. Malaysia

Like the Philippines, Malaysia also seeks to “minimize tensions [with China] in the South China Sea.”¹⁵⁷ Malaysia has expressed statements indicative of acquiescence to Chinese pressure.¹⁵⁸ For example, Malaysian Foreign Minister Saifuddin Abdullah “denied seeing an increase in Chinese navae vessels, despite reports of increased sightings of Chinese naval, coast guard, and maritime militia vessels [in Malaysian waters] in the South China Sea.”¹⁵⁹ Furthermore, in September 2019, Malaysia and China “announced a bilateral consultation mechanism on maritime affairs,” which is likely to lead to positive development between the countries.¹⁶⁰

C. Japan

Strategic allies like Japan rely on the United States as a security guarantor, but the United States must not underestimate how economically dependent these countries are on China, “particularly as an export market and a [major factor] in manufacturing supply chains.”¹⁶¹ Japan and China currently contest sovereignty over a small island group between the mainland and Japan called the Senkaku Islands.¹⁶² The United States and Japan consider these islands to be under Japanese Sovereignty, but China nonetheless routinely patrols these waters around the uninhabited islands in an attempt to “undermine claims that Japan effectively controls them.”¹⁶³

In response to China’s increased naval presence, Japan pursued both diplomatic and military responses.¹⁶⁴ Since 2010, Japan has openly criticized Chinese actions over disputes in the South China Sea and “called for a negotiated solution [with China], which would include Vietnam and the

157. *Id.*

158. *See id.*

159. *Id.*

160. *Id.*

161. John S. Van Oudenaren, *America’s Asian Allies Aren’t Ready for a Cold War with China*, THE NAT’L INT. (Nov. 6, 2018), <https://nationalinterest.org/feature/americas-asian-allies-arent-ready-cold-war-china-35332> [<https://perma.cc/TN25-RVAU>]. For an overview of trade figures between Japan and China see *Japan exports from China*, TRADING ECON., <https://tradingeconomics.com/japan/exports/china> [<https://perma.cc/2VS4-2XX3>].

162. Paal, *supra* note 8.

163. *Id.*

164. Yoichiro Sato, *Japan Versus China in the South China Sea*, NIKKEI ASIAN REV. (Oct. 3, 2018, 7:01 AM), <https://asia.nikkei.com/Opinion/Japan-versus-China-in-the-South-China-Sea> [<https://perma.cc/Z288-LEW2>].

Philippines.”¹⁶⁵ Japan also provided naval support to Vietnam and the Philippines, including patrol boats, despite China’s repeated protests.¹⁶⁶

D. Vietnam

As China steps up its efforts to interfere with legitimate and lawful maritime economic activities of countries neighboring the South China Sea, it is also using its capable military presence in the contested sea to pressure foreign companies doing business with these countries.¹⁶⁷ China recently increased the pressure on smaller claimants to the South China Sea, particularly on Vietnam.¹⁶⁸ This increase is due to several factors including a recently proposed development deal between China and the Philippines that is gaining traction.¹⁶⁹ Since the Philippines and Vietnam are two of the strongest claimants opposing China’s excessive claims in the South China Sea, the progress made with the Philippines has allowed China to focus more on Vietnam.¹⁷⁰

Furthermore, China is also interrupting projects of companies based in the United States like Texas-based ExxonMobil, which recently found itself involved in a \$10 billion natural gas project in Vietnam-claimed waters.¹⁷¹ The project, also known as Blue Whale, was due to come online in 2022 right as Vietnam is expected to experience an energy shortage.¹⁷² The energy provided by this project is estimated to be able to power Hanoi for twenty years, generate \$20 billion in revenue for the Vietnamese government, and create thousands of local jobs.¹⁷³ Even though the project is outside of China’s nine-dash line claims, there are still rumors that China is placing significant pressure on ExxonMobil to cease its involvement in the Blue Whale project.¹⁷⁴ This could be China’s attempt to covertly widen trade conflicts with the United States. If this is true, Vietnam will have few resources to rely on with a power shortage looming in the near

165. *Id.*

166. *Id.*

167. Lucio Blanco Pitlo III, *Drivers and Risks of China’s Pressure on Vietnam*, ASIA MAR. TRANSPARENCY INITIATIVE (Oct. 8, 2019), <https://amti.csis.org/drivers-and-risks-of-chinas-pressure-on-vietnam/> [<https://perma.cc/S49U-2ZWX>].

168. *Id.*

169. *Id.*

170. *Id.*

171. Tim Daiss, *All the Reasons ExxonMobil May Leave Vietnam*, ASIA TIMES (Sept. 17, 2019), <https://www.asiatimes.com/2019/09/article/all-the-reasons-exxonmobil-may-leave-vietnam/> [<https://perma.cc/VK5Y-9QSB>].

172. *Id.*

173. Pitlo III, *supra* note 167.

174. Daiss, *supra* note 171; Pitlo III, *supra* note 167.

future. Vietnam will need to turn to alternative sources like solar, wind, and “possibly even Chinese coal imports” to make up for the shortage.¹⁷⁵

VII. APPLICABLE LAW

A. Overview of ARIA

On December 31, 2018, President Donald Trump signed into law the Asia Reassurance Initiative Act (ARIA), which “establishes a multifaceted strategy to increase U.S. security, economic interests, and values in the Indo-Pacific region.”¹⁷⁶ A primary motivator behind passing ARIA is the challenge perceived in the United States Congress of dealing with China’s rise to power.¹⁷⁷ In addition to addressing the United States’ conflicts with China, ARIA takes a broad swipe at several issues to be addressed throughout Asia, including a focus on human rights issues, terrorism, and nuclear disarmament in the Korean peninsula.¹⁷⁸ As a whole however, the Act seeks to “reassure U.S. allies, strategic partners, and other nations of the United States’ continued commitment to the region.”¹⁷⁹ But in application, the Act is just support for “a more engaged [United States] in Asia and a statement of concern about China’s rise [to power].”¹⁸⁰

Through ARIA, the United States Congress is “exercising oversight over the Executive through authorizing expenditure for specific activities” in Asia.¹⁸¹ For example, Congress requires annual reports on security issues and mandates specific strategies to achieve the above-listed objectives.¹⁸² Through their congressional oversight, the writers of ARIA prioritized the “relations with treaty allies and strategic partners across the Indo-Pacific

175. Daiss, *supra* note 171.

176. Ankit Panda, *What ARIA Will and Won’t Do for the US in Asia*, THE DIPLOMAT (Jan. 14, 2019), <https://thediplomat.com/2019/01/what-aria-will-and-wont-do-for-the-us-in-asia/> [<https://perma.cc/R2CX-76C6>].

177. *Id.*

178. *Id.*

179. MARTIN ET AL., *supra* note 4, at 1.

180. Ankit Panda, *Is Donald Trump’s ARIA an Overture to Greater Harmony in the Indo-Pacific region?*, SOUTH CHINA MORNING POST (Jan. 12, 2019), <https://www.scmp.com/news/china/diplomacy/article/2181807/donald-trumps-aria-overture-greater-harmony-indo-pacific-region> [<https://perma.cc/QYS8-DYX9>].

181. Carl Thayer, *ARIA: Congress Makes Its Mark on US Asia Policy*, THE DIPLOMAT (Jan. 8, 2019), <https://thediplomat.com/2019/01/aria-congress-makes-its-mark-on-us-asia-policy/> [<https://perma.cc/NXE5-2MTC>].

182. *Id.*

region,” including an emphasized address to the “challenges posed by China’s destabilizing activities [in the region] . . . including the East China Sea and the South China Sea.”¹⁸³

The writers of the Act acknowledged that the United States must continue to play a leading role in the Indo-Pacific, or the international system may wither.¹⁸⁴ The writers were aware of China’s destabilizing activities that disrupted military security.¹⁸⁵ Therefore, to counteract these activities, the writers of ARIA declared that the United States intends to “continue to play a leading role in the Indo-Pacific by—(A) defending peace and security, (B) advancing economic prosperity, and (C) promoting respect for fundamental human rights.”¹⁸⁶

For this Comment, ARIA is best understood by identifying four main sections outlining American intentions to promote and develop (1) policy and diplomatic strategy in the Indo-Pacific, (2) promotion of American security interests in the Indo-Pacific, (3) promotion of economic interests in the region, and (4) promotion of American values in the Indo-Pacific.¹⁸⁷ Each of these sections include a statement of applicable United States policy and requires the executive branch to report to Congress on various aspects of its implementation.¹⁸⁸

However, ARIA fails to address the strong economic interdependence between the United States’ trading partners and national security interests in Asia.¹⁸⁹ ARIA is not written to take affirmative steps towards managing China’s rise and is indicative of American policy that is drastically underprepared and unaware of China’s potential to supplant the United States in Southeast Asia. The policy outlined in ARIA is too aspirational and detached from the current situation to handle the issue. ARIA’s main impact will likely be symbolic by signaling American commitment to the region and defining efforts by Congress to support that end, but as it is written, it is only aspirational.¹⁹⁰

B. Security Provisions

ARIA states that the Indo-Pacific region poses significant security challenges that threaten to undermine the United States’ national security

183. *Id.*

184. MARTIN ET AL., *supra* note 4, at 1.

185. *See id.*

186. Asia Reassurance Initiative Act of 2018, Pub. L. No. 115-409, § 2(5), 132 Stat. 5387, 5388 (2018).

187. *See* MARTIN ET AL., *supra* note 4.

188. *Id.*

189. *See id.*

190. *Id.*

interests, influence, and global stability.¹⁹¹ In addressing those challenges, ARIA sets aside \$1.5 billion for the Department of State, the U.S. Agency for International Development, and the Department of Defense.¹⁹² This money is meant to “advance United States foreign policy interests and objectives in the Indo-Pacific;” “improve the defense capacity and resiliency of partner nations to resist coercion and deter and defend against security threats;” and “conduct regular bilateral and multilateral engagements, particularly with the United States’ most highly capable allies and partners to meet strategic challenges,” including the challenges presented by certain destabilizing activities by China.¹⁹³ The amounts appropriated are later earmarked specifically for “United States Government efforts to counter the strategic influence of” China and their efforts to undermine the international system.¹⁹⁴

To combat recent Chinese territorial aggression, ARIA also states that it is the commitment of the United States to promote “freedom of navigation under international law.”¹⁹⁵ This commitment is in direct contrast to recent Chinese aggression in the South China Sea, where China aggressively defends its perceived maritime territories in direct contradiction with international law as described in greater detail above.¹⁹⁶ Through its freedom of navigation operations (FONOPs), the United States generally contests these excessive maritime claims through diplomatic communications, operational assertions, and bilateral and multilateral consultations.¹⁹⁷ ARIA seeks to emphasize the United States’ commitment to pursue these measures in order to reinforce internationally-recognized territorial claims.¹⁹⁸ The writers of ARIA seek to do so by continuing FONOPs in the contested areas.¹⁹⁹

ARIA also calls for the president to develop diplomatic strategies to work with the United States’ allies and partners to conduct FONOPs in the Indo-Pacific, including in the South China Sea “in support of a rules-based international system benefitting all countries.”²⁰⁰ This statement is essentially

191. *Id.*

192. Asia Reassurance Initiative Act of 2018, Pub. L. No. 115-409, § 201, 132 Stat. 5387.

193. *Id.*

194. *Id.*

195. *Id.* § 102.

196. Freund, *supra* note 120.

197. *Id.*

198. *See* Asia Reassurance Initiative Act, § 102.

199. *See id.*

200. *Id.* § 213.

a thinly-veiled call to action for the president to reestablish maritime superiority to contest Chinese influence and growing dominance.

In its diplomatic strategy, ARIA also emphasizes the United States' commitment "to expand appropriate security and defense cooperation with allies and partners, as appropriate."²⁰¹ As part of the \$1.5 billion set aside, ARIA states that the appropriation should be used, among other things, "to improve the defense capacity and resiliency of partner nations . . . through foreign military financing and international military education and training programs."²⁰² In addition to improving defense capacities through financial support, the Act also seeks to conduct bilateral and multilateral engagements with allies and partners to meet strategic challenges, including those challenges presented by China's destabilizing activities.²⁰³

C. Economic Provisions

ARIA also includes provisions expressing congressional support for bilateral, multilateral, or regional trade agreements that will lead to the protection and creation of American jobs and promote the growth of the United States economy.²⁰⁴ It encourages a "comprehensive economic engagement" framework with the Association of Southeast Asian Nations (ASEAN), continued use of the Asia-Pacific Economic Cooperation (APEC), and other agreements.²⁰⁵ ARIA also focuses on intellectual property protection issues, which are a serious point of contention in the developing trade war with China.²⁰⁶ The Act states that the president should take substantial steps to protect the United States' intellectual property and treat the issue as a top priority, particularly against intellectual property violations by China.²⁰⁷

In its emphasis on the U.S.-ASEAN strategic partnership, ARIA seeks to help "build a strong, stable, politically cohesive, economically integrated, and socially responsible community of nations" and urges ASEAN to continue to foster greater integration among its members.²⁰⁸ In this section, ARIA draws parallel language to its diplomatic provisions that reinforce international determinations of maritime territories. ARIA states that, through efforts

201. *Id.* § 102.

202. *Id.* § 201.

203. *Id.*

204. *See* § 301 (titled "Promoting United States Economic Interests in the Indo-Pacific Region").

205. MARTIN ET AL., *supra* note 4.

206. *See* Asia Reassurance Initiative Act, § 305.

207. Phase One of the trade agreement mentioned above is another example of the United States' determination to protect intellectual property. *Id.*

208. *Id.* § 205.

by the United States and ASEAN allies, the United States will support the enhancement of maritime capability and maritime domain awareness.²⁰⁹ The writers intended to support this statement by enhancing the maritime capabilities of countries that respond to emerging threats to maritime security in the region.²¹⁰

VIII. WHAT ARIA IS FAILING TO DO

A. *ARIA Fails to Address Significant Economic Issues*

China has integrated itself with the rest of the world and is currently the “world’s second-largest economy, [a] top trading nation, and [the] most populous country.”²¹¹ The United States must address the immense influence and potential that the Chinese economy has over the United States. China is one of the world’s leading exporters of technology, with much of its technology being designed by companies based in the United States who in turn receive tremendous profit.²¹² The two countries are increasingly interdependent and failure to uphold this link between their economies is not a realistic option.²¹³

However, the recent trade war with China indicates a United States policy that is unaware of or disregards the importance of maintaining this relationship. President Trump recently tweeted that “[o]ur great American companies are hereby ordered to immediately start looking for an alternative to China, including bringing our companies HOME and making your products in the USA.”²¹⁴ Since President Trump came into office, U.S. trade policy has undergone drastic reorientation, creating volatility and significantly impacting global trade and supply chains.²¹⁵ Statements like these paired with the unreliability of the United States’ commitment to international

209. *Id.*

210. *Id.*

211. Paal, *supra* note 8, at 5.

212. *Id.* at 5–6.

213. *Id.* at 6.

214. Donald J. Trump (@realDonaldTrump), TWITTER (Aug. 23, 2019, 7:59 AM), <https://twitter.com/realDonaldTrump/status/1164914960046133249> [<https://perma.cc/C5P9-ZFTD>].

215. Brian Harding & Kim Mai Tran, *U.S.-Southeast Asia Trade Relations in an Age of Disruption*, CTR. FOR STRATEGIC & INT’L STUD. 1–2 (June 27, 2019), <https://www.csis.org/analysis/us-southeast-asia-trade-relations-age-disruption> [<https://perma.cc/BX2T-GV2B>].

trade agreements due to presidential turnover have created unease with the United States' Asian allies and trading partners.²¹⁶

For instance, on his third day in office, President Trump pulled out of the Obama-era Trans-Pacific Partnership (TPP) and pursued an interest in only forming bilateral trade deals that have had widespread implications for U.S.-Southeast Asia economic and political relations.²¹⁷ The TPP was designed to open more Asian markets to the United States' goods, provide much needed protection for United States-based companies' intellectual property, and reinforce environmental and labor productions.²¹⁸ Each of these benefits would have mutually benefitted United States-based companies operating in the region and the people of those areas.²¹⁹ By rejecting the TPP, the United States is driving its Asian allies and partners into the arms of China's state-run economy and giving China even greater leverage to impose its will upon its regional neighbors.²²⁰

Although Congress intended ARIA to reassure our allies in Asia about the United States' pivot towards Asian trade relations, ARIA does not take an assertive stance towards preserving or extending this economic relationship. The United States' allies and trading partners, who have long benefited from the presence of the United States in their region, are now uncertain as to how the United States will decide its future role in the Asia-Pacific.²²¹ These countries are also paying close attention to China.²²² They can sense China's growing strength and influence and now face the dilemma of sticking by an unreliable United States partnership or acquiescing to their powerful neighbor.

B. ARIA Insufficiently Addresses Military and Strategic Issues

The writers of ARIA correctly found that the Indo-Pacific region poses significant security challenges that threaten American national security interests, regional peace, and global stability through viable threats from China and North Korea.²²³ The Act emphasizes that Congress is aware of the importance of working with allies and partners to confront common challenges and calls for a policy that secures national security interests of

216. *Id.* at 2.

217. *Id.*

218. Carter, *supra* note 6.

219. *Id.*

220. *Id.*

221. Paal, *supra* note 8.

222. *Id.*

223. See Asia Reassurance Initiative Act of 2018, Pub. L. No. 115-409, § 2, 132 Stat. 5387.

the United States along with its partners and allies.²²⁴ ARIA addresses the need for strategic policy and lays a more firm stance than its address of economic policy goals. In contrast to its economic policies, ARIA asserts clear goals and policy requirements in pursuance of current strategic strategies. These policies include the commitment to freedom of navigation operations patrols (FONOPs) in the South China Sea, where the United States actively patrols international waters to deter Chinese territorial claims.²²⁵ ARIA lays out a plan to continue business as usual in the South China Sea with a maintained emphasis on addressing threats from China and North Korea.²²⁶

However, Professor Graham Allison argues that the likelihood of military conflict between two great powers, such as the United States and China, is significantly more likely if the United States continues to pursue business as usual.²²⁷ Both President Xi Jinping of China and President Obama addressed the issue of the Thucydides Trap and recognized it as a unique challenge faced by their countries, but it is unclear how President Trump will address the issue.²²⁸ Regardless of President Trump's uncertainty, it is undisputed that war with China would be catastrophic and is deeply undesired by both the United States and China.²²⁹

ARIA recommends that the United States continue to pursue policies like FONOPs, expanding security and defense cooperation with allies, and sustaining a strong military presence in the Indo-Pacific.²³⁰ Unfortunately, these recommendations fail to address pertinent issues. Although the appeal towards reaffirming relationships with allies such as Japan, the Philippines, South Korea, Thailand, and India is a step in the right direction, ARIA fails to address the need to fundamentally pivot from the United States' current strategies and pursue a new course of action.

224. *Id.*; MARTIN ET AL., *supra* note 4.

225. MARTIN ET AL., *supra* note 4.

226. *Id.*

227. Professor Allison argues that if the United States pursues business as usual with China, then it should expect history as usual, which in the framework of the Thucydides Trap, is likely to be war. *See* Talks at Google, *Destined for War: America & China | Graham Allison | Talks at Google*, YOUTUBE (July 18, 2017), <https://www.youtube.com/watch?v=hDZAVNPbtBg> [<https://perma.cc/LVQ2-JCGL>].

228. Farah Mohammed, *Can the U.S. and China Avoid the Thucydides Trap?*, JSTOR DAILY (Nov. 5, 2018), <https://daily.jstor.org/can-the-u-s-and-china-avoid-the-thucydides-trap/> [<https://perma.cc/CGS5-LUH2>].

229. *See* Chen Xiangmiao, *The US 'New Cold War' Battle Cry in the South China Sea*, THE DIPLOMAT (Aug. 17, 2020), <https://thediplomat.com/2020/08/the-us-new-cold-war-battle-cry-in-the-south-china-sea/> [<https://perma.cc/6Q92-YFK6>].

230. *See* MARTIN ET AL., *supra* note 4.

IX. PROPOSED SOLUTION

A. How ARIA Should Address Economic Issues

The United States needs to present itself as a dependable and longstanding economically in Asia. ARIA, in its current form, fails to pursue a more affirmative stance to reassure Asian countries of the United States' intent to remain a viable partner. The language presented in ARIA is too aspirational and lacks the necessary impetus for the proposed policies to survive long enough to make a significant impact on the United States' trade partners in Southeast Asia. Essentially, the United States needs to promote economic policies in Southeast Asia that instill confidence in its trade partners. However, the volatility of economic policies caused by presidential administration turnover fails to promote this confidence.

The United States views ARIA as a chance to reach a new trade deal with Asian countries after President Trump's withdrawal from the Trans-Pacific Partnership (TPP).²³¹ However, the United States ought to pursue a substantial shift away from realigning its existing trade deals with each presidential administration turnover. The United States Congress ought to pursue legislation that is more likely to bind future presidential administrations. Without legislation to provide relative certainty to Asian trading partners and strategic allies of the United States' commitment in the region, China will continue to grow as a viable alternative for Asian countries seeking certainty and confidence in their economic partners and military allies.

B. How ARIA Should Address Military and Strategic Issues

Rather than reinforcing current policies like those outlined in the economic goals of ARIA, the strategic issues addressed in ARIA would be better suited if they were to take a completely different approach towards the potential conflicts with China. ARIA ought to pursue a more active route in negotiations with China to get it to settle its maritime and sovereignty disputes in the South and East China Seas. Prompting China to resolve these disputes with its neighbors is imperative because a third-party dispute would likely draw the United States into a military conflict with China.²³²

231. ARIA is believed to embody the United States' attempt to consolidate power and the dependency of Asian countries on the United States to strengthen regional integration for American influence. See Zhorea Shara Garcia, *The Asia Reassurance Initiative Act and ASEAN*, ASEAN BRIEFING (Jan. 24, 2019), <https://www.aseanbriefing.com/news/2019/01/24/asia-reassurance-initiative-act-asean.html> [<https://perma.cc/84AU-ZGW3>].

232. See Talks at Google, *supra* note 227.

Conflict with North Korea is an excellent example of a third-party that could drag the United States and China into military conflict. With a history of aggression and instigating conflicts with its neighbors, there is a likelihood that North Korea may start a war with neighboring Japan.²³³ This is exemplified by the recent missile launches into the Sea of Japan less than 200 miles from the Japanese Coast.²³⁴ Although it is unclear exactly what route China would take if North Korea calls for its defense, it would most likely create considerable unease regardless of China's decision.

C. *ARIA Moving Forward*

ARIA is meant to reaffirm the United States' goals in Asia and provide reassurance to its trade partners and strategic allies that the growing conflict with China is a top priority.²³⁵ ARIA intends to apply future United States policy in Asia and sets aside funding for the United States' commitments and goals in this region.²³⁶ However, the language of the Act is mostly aspirational and does not lay the groundwork for a policy that instills confidence in these Asian countries. In a time of political uncertainty and spontaneity, the United States needs to pass a more substantive version of ARIA to instill confidence in these affected countries of the United States' intentions and viability as a trade partner. The uncertainty created by the Trump Administration's willingness to abandon long-time trade partners and forego trade agreements has significantly decreased the certainty of the United States as a viable trading partner and military ally.

By passing a more substantive law that would hold the United States more accountable for its actions in Asia, the United States can reinforce the confidence that these Asian countries used to have in the United States as an economic partner and strategic ally. As countries regain confidence in the United States as a partner and ally, they will be less likely to readily

233. Motoko Rich, *North Korean Missile Delivers a Message: There's Little Japan Can Do*, N.Y. TIMES (Oct. 3, 2019), <https://www.nytimes.com/2019/10/02/world/asia/japan-north-korea-missile.html> [<https://perma.cc/5HS8-5M4Q>].

234. The launch of the missile came one day after North Korea agreed to resume talks with the United States to discuss the dismantling of its nuclear facilities. See Victoria Kim, *North Korea Launches Missile into Waters Near Japan Days Before Nuclear Talks Set to Resume with U.S.*, L.A. TIMES (Oct. 1, 2019, 8:09 PM), <https://www.latimes.com/world-nation/story/2019-10-01/north-korea-launches-missile-into-waters-near-japan-days-before-nuclear-talks-set-to-resume-with-u-s> [<https://perma.cc/6DML-7T7Q>].

235. Garcia, *supra* note 231.

236. MARTIN ET AL., *supra* note 4.

acquiesce to Chinese influence. The United States needs to expressly reinforce this confidence through policy measures beyond the proposals in ARIA. Without reasserting itself in this way, the United States will continue to create uncertainty among its trade partners in Southeast Asia while China will be there to replace the United States.

There is historical and legislative precedent supporting Congress's ability to restrain the executive branch in making foreign policy decisions that are important to consider.²³⁷ Congress has implied constitutional authority and vested interests that support active oversight of the president's ability to regulate international policy.²³⁸ Through these powers, Congress has oversight of the development of foreign policy by the executive branch, which can be applied to policies that endanger the United States' neutrality or are otherwise contrary to national interests.²³⁹ For example, the War Powers Resolution Act passed in 1973 was designed by Congress to limit the president's ability to introduce the United States into hostilities or situations where imminent involvement in hostilities is indicated.²⁴⁰ Among other restrictions included in the Act, the law requires the president to notify Congress after deploying the armed forces and extends oversight by limiting how long units can be engaged without further congressional approval.²⁴¹

Acts like the War Powers Resolution are undoubtedly the exception in Congress's ability to restrain the president in matters of foreign policy. Historically, Congress was forced to take a backseat in presidential foreign policymaking, yet there are other indirect means that Congress can use to assert influence.²⁴² Arguably, Congress can directly influence foreign policy making through anticipatory reactions, legislative adjustments to the decision-making process in the executive branch, and, as employed extensively in modern politics, political grandstanding.²⁴³

Properly applied to ARIA and the consequences of an unstable United States foreign policy commitments in Asia and the South China Sea, congressional oversight of the executive branch could feasibly provide the certainty that is needed by the United States' trade partners and strategic allies. Certainly, a step in the right direction by Congress would be to take

237. See James M. Lindsay, *Congress and Foreign Policy: Why the Hill Matters*, 107 POL. SCI. Q. 607, 610 (1992) (In the 1980s, "legislators placed so many constraints on the executive branch that by the end of the Reagan presidency 'U.S. policy toward Central America was effectively being set by Congress.'").

238. L. ELAINE HALCHIN & FREDERICK M. KAISER, CONGRESSIONAL OVERSIGHT 3 (Congressional Research Service 2012).

239. *Id.* at 4.

240. War Powers Act, H.R. 4858, 93rd Cong. (1973).

241. *Id.* at § 4.

242. Lindsay, *supra* note 237, at 609.

243. *Id.*

a closer look at ARIA and reassess exactly how powers of congressional oversight can be applied. By doing so, Congress may be able to provide Asian allies with confidence that ongoing foreign policy will outlast the turnover of periodic presidential administrations.

X. CONCLUSION

The United States needs to take greater precautions and pay closer attention to the threats presented by China's rise, especially concerning China's influence in the South China Sea. There is an overwhelming concern among scholars, media, and governments that, due to China's immense economic influence in the region, "a disruption of South China Sea trade would precipitate a global economic crisis."²⁴⁴ Additionally, as argued above, China has steadily been making maneuvers to tacitly, and in some cases, forcefully stake its claims in the South China Sea. Overall, China has proven to be quite successful despite its advances being opposed by many of its regional neighbors and the dominant influence of the United States.

To counteract the advances made by a rising China, the United States needs to take a more affirmative stance towards foreign policy in Asia. The relationships shared between the United States and its trade partners and military allies in Asia are becoming frayed. Many of these countries are torn between the United States, a beneficial and benevolent partner prone to unreliability with each presidential turnover, and China, a steady and politically predictable partner with oppressive tendencies.

In several ways, many of the United States' former trade partners and allies no longer view the United States as a predictable trade partner and the uncertainty stemming from U.S.-China trade relations further exacerbates these feelings.²⁴⁵ A reassessed ARIA will help establish trust beyond the uncertainty created by the United States' executive administrative turnover. The United States must create a long-lasting policy that locks the executive branch to a specific policy route so that Asian countries may continue to see both the United States and China as viable partners, rather than being forced to choose between one or the other.

244. *Trade Transits*, *supra* note 72.

245. *Harding & Tran*, *supra* note 215.

